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10 SUPERIOR COURT OF STATE OF ARIZONA
11 COUNTY OF YAVAPAI

12 STATE OF ARIZONA,

13 Plaintiff,

14 vs.

15 JAMES ARTHUR RAY,

16 Defendant.

CASE NO. V1300CR201080049

**DEFENDANT JAMES ARTHUR RAY'S
REPLY IN SUPPORT OF MOTION IN
LIMINE (NO. 3) TO EXCLUDE
AUTOPSY PHOTOGRAPHS
PURSUANT TO ARIZ. R. EVID. 403**

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The autopsy photographs in this case have no possible probative value. The cause of death the State will seek to prove *has no characteristics that can be seen* in any of the 70 autopsy photographs taken of Mr. Shore, Ms. Brown or Ms. Neuman. Nor is there any other contested question upon which the photographs might shed light. The State's terse Response hardly disputes these points, relying instead on vague factual assertions and inapplicable legal precedent. Because there is no probative value to the autopsy photographs and because their capacity to inflame the jury is obvious, the photographs should be excluded pursuant to Arizona Rule of Evidence 403.

II. ARGUMENT AND AUTHORITIES

No one disputes the cardinal rule in Arizona regarding inflammatory photographs: "if the photographs have no tendency to prove or disprove any question which is actually contested, they have little use or purpose except to inflame and would usually not be admissible." *State v. Chapple*, 135 Ariz. 281, 288 (1983). The State's five-page Response contains only a single sentence that even purports to argue that the autopsy photographs in this case are admissible. Both of the State's passing rationales are baseless.

A. The Photographs Are Not Admissible to Prove Identity.

First, the State asserts that the photographs will be "relevant to establish the identities of the three victims." Response at 4. That is spurious. There is no question in this case as to the victims' identity, and declaring the photographs "relevant" to identity obviously does not prove their admissibility. To be admissible, photographs must have "more than mere technical relevance." *Chapple*, 135 Ariz. at 288. "[E]xhibits which may tend to inflame the jury must *first* be found relevant. The trial court must then consider the probative value of the exhibits and determine whether it outweighs the danger of prejudice." *Id.* (emphasis added). Here, the photographs' reflection of the victims' identity would be "cumulative of uncontradicted and

undisputed testimony.” *Id.* at 289–90. The photos therefore have “so little probative value” on this issue as to be inadmissible. *Id.*

B. The Photographs are Not Admissible to Illustrate the Medical Examiners’ Testimony.

Second, the State asserts that the photographs “may also be necessary to help jurors in understanding the doctors’ testimony.” Response at 4. The State offers no factual elaboration of how that could possibly be true. The Medical Examiners stated that the autopsy photographs are not needed to understand any aspect of how the victims died, *see* Defendant’s Motion at 3–4, and the State does not dispute that *nothing* in the photographs will illustrate the cause of death.

The State’s only explanation of its vague attempt to connect the photos to the doctors’ testimony comes by way of citation to three capital-murder cases. Examination of these cases removes any credibility from the State’s argument.

In *State v. Jones*, 185 Ariz. 471 (1996), the defendant was charged with two counts of premeditated first degree murder and one count of attempted premeditated first degree murder. “Although there [wa]s no clear evidence of the sequence of the homicides, the scenario posited to the jury was” that the defendant beat a friend and his grandmother with a baseball bat and suffocated or strangled the friend’s seven-year-old daughter. *Id.* at 477. Photographs that depicted the injuries to the victims’ skull and brain were “relevant to illustrate the medical examiner’s testimony, to show the cause of [the victims’] deaths and the similarities of their injuries, and to refute defendant’s claim that another person killed” one of the victims. *Id.* at 485. Another photograph depicted “the flushed condition of [the daughter’s] face, which support[ed] the conclusion that she was strangled or suffocated.” *Id.*

In *State v. Gerlaugh*, 135 Ariz. 164 (1982), the defendants, two hitchhikers, were charged with first-degree murder, armed robbery, and kidnapping. The defendants forced the victim to drive to a secluded location where they beat him, got into his car and ran him over several times, and, because he appeared to still be alive, stabbed him with a screwdriver thirty to forty times. *Id.* at 166. The defendants then dragged the victim to a nearby field and covered his body with alfalfa to hide him. *Id.* The photographs in question “showed the body . . . in the

1 alfalfa field.” *Id.* at 169. They also “could have shown the jury the location of the wounds and
2 illustrated how the crime was committed.” *Id.* And although the medical examiner testified that
3 he did not need the crime-scene photographs to describe the stab wounds to the jury, the court
4 noted that the photos “may have assisted the jury in understanding [the examiner’s] testimony,
5 particularly in light of the fact that his descriptions were couched in technical medical terms.” *Id.*

6 In *State v. Salazar*, 173 Ariz. 399 (1992), the defendant was charged with first-
7 degree murder, kidnapping, and first-degree burglary for beating and strangling “a fragile, 83-
8 year-old woman, 5 feet tall, 89 pounds, who wore a patch over a sightless eye and lived alone.”
9 *Id.* at 403. The court held that the photograph of the victim as she was found in her home was
10 admissible. It “show[ed] the position of the victim in relation to the bed, the tablecloth speckled
11 with blood, the file cabinet with the bloody smear, and the other objects referred to in the
12 testimony.” *Id.* at 407. The photograph “also show[ed] the telephone cord around the victim’s
13 neck, the phone receiver placed back on its cradle after the strangulation, the footprint next to the
14 body, and the blood on the victim’s face and neck.” *Id.* “The medical examiner,” the court
15 explained, “used the photo to demonstrate how the details at the murder scene helped him conduct
16 his investigation and to reach conclusions regarding the victim’s death.” And the court held that
17 the photo “was also probative on the issue of intent.” *Id.*

18 Thus, in each of these three capital-murder cases, unlike in the present case, the
19 causes of death had physical manifestations that were visible in the photos. *See Gerlaugh*, 134
20 Ariz. at 169 (location of the wounds); *Jones*, 185 Ariz. at 485 (flushed face from strangulation or
21 suffocation, and location of skull bruising); *Salazar*, 173 Ariz. at 407 (telephone cord around
22 victim’s neck and blood on victim’s face). In addition to these visible manifestations, the
23 photographs conveyed information relevant to the related, contested question of *how* the murderer
24 committed the crime. *See Jones*, 185 Ariz. at 485 (by strangulation, suffocation, and beating with
25 baseball bat); *Gerlaugh*, 134 Ariz. at 169 (by, *inter alia*, stabbing with a screwdriver); *Salazar*,
26 173 Ariz. at 407 (by beating and strangling with telephone cord). And the photos were probative
27 on yet other contested questions, such as intent (*Salazar*), identity of the murderer (*Jones*), and
28

1 location of the body (*Gerlaugh*). The photos in the present case plainly cannot serve any of these
2 functions, and the State's perfunctory sentence to the contrary cannot be taken seriously.¹

3 C. **The Evidence Is Unduly Prejudicial Under Rule 403.**

4 The autopsy photos in this case are undeniably prejudicial. As in *Chapple*, "their
5 admission in evidence could have almost no value or result except to inflame the minds of the
6 jury." *Chapple*, 135 Ariz. at 289. Indeed, the photographs' only function, if admitted, would be
7 to shock the jury with the gratuitous horror of a postmortem examination and incite them to render
8 a verdict based on emotion, prejudice, and bias rather than the evidence. This is precisely what
9 Rule 403 does not allow.

10 **III. CONCLUSION**

11 For the foregoing reasons, Mr. Ray requests the Court grant his motion to exclude
12 autopsy photographs pursuant to Arizona Rule of Evidence 403.

13
14 DATED: August 10, 2010

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18 By: 

19 Attorneys for Defendant James Arthur Ray

20 Copy of the forgoing mailed/faxed/
21 delivered this ____ day of August, 2010, to:

22 Sheila Polk
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26 By: _____

27 ¹ The State also justifies its attempt to avoid exclusion of the autopsy photos by reference to a supposed concern over
28 what defense experts may say. *See* Response at 4. That concern should not delay a ruling on this motion *in limine*,
which addresses the State's case in chief. If the State believes that the defense case opens the door, such that the
photographs become relevant and admissible, the State can move to admit the photos at that time.